ZAINOOR FAIROSE ATONG (AS THE REPRESENTATIVE OF THE ESTATE OF MAZLAN AHMAD, DECEASED) & ORS v. PACIFIC & ORIENT INSURANCE CO BHD

COURT OF APPEAL, PUTRAJAYA
ALIZATUL KHAIR OSMAN JCA
BADARIAH SAHAMID JCA
ZABARIAH MOHD YUSOF JCA
[CIVIL APPEAL NO: W-02(NCVC)(A)-1324-08-2015]
16 MAY 2017

CIVIL PROCEDURE: *Jurisdiction – High Court – Co-ordinate jurisdiction – Whether High Court has power to set aside order of another High Court of co-ordinate jurisdiction – Whether judgment regularly obtained – Principle in Badiaddin Mohd Mahidin & Anor v. Arab Malaysia Finance Bhd – Whether applicable*

The present appeal arose from the decision of the High Court Judge ('the HCJ') which concerned the interpretation of the provisions of ss. 91 and 96 of the Road Transport Act 1987 ('the RTA'). The appellants appealed against the part of the judgment of the Judicial Commissioner ('the JC') of High Court granting declarations that (i) the order made by the HCJ was devoid of merit, invalid and ought to be set aside; and (ii) the prayers sought ought not to be granted as the court did not have the jurisdiction to make such order in a declaratory order. The issues that arose in the present appeal were (i) whether a judgment or order made by one High Court can be set aside by another High Court of co-ordinate jurisdiction, where the first judgment is not obtained in default but obtained regularly; and (ii) whether the first judgment of the High Court could be attacked collaterally based on any other grounds other than that in which the first judgment was made in breach of a substantial statutory prohibition or in defiance of a statute, as decided in the Federal Court case of *Badiaddin Mohd Mahidin & Anor v. Arab Malaysia Finance Bhd* ('*Badiaddin*'s case').

Held (allowing appeal)
Per Alizatul Khair Osman JCA delivering the judgment of the court:

(1) In *Badiaddin*'s case, the Federal Court held that one High Court could not set aside a final order regularly obtained from another High Court of concurrent jurisdiction. One special exception is where the final judgment of the High Court could be proved to be null and void on the ground of illegality or lack of jurisdiction. Apart from breach of rules of natural justice, a superior court could exercise its inherent and discretionary jurisdiction to set aside an order *ex debito justitiae* in cases involving orders which contravened 'any written law' but the contravention should be one which defies a substantive statutory

prohibition. The discretion to invoke the inherent jurisdiction should also be exercised judicially in exceptional cases where the defect is of such a nature that there was a real need to set aside the defective order to enable the court to do justice. (paras 3-5)

(2) The facts of the case in the present appeal had none of the features that were present in *Badiaddin*'s case. This was not a case where an order was made in defiance of a substantive statutory prohibition or in contravention of a statute. If the HCJ was erroneous in her interpretation of those provisions of the RTA, the proper recourse for the respondent would have been to appeal against the decision of the HCJ and not to file collateral proceedings to set it aside, as was done in this case. The JC had exceeded his own jurisdiction in holding that the HCJ had no jurisdiction to grant the order or judgment made. The decision of the JC was set aside and the judgment of the HCJ was restored. (paras 8-11)

Bahasa Malaysia *Headnotes*

Rayuan ini berbangkit susulan keputusan Hakim Mahkamah Tinggi ('HMT') bersangkutan tafsiran peruntukan ss. 96 dan 91 Akta Pengangkutan Jalan 1987 ('APJ'). Perayu-perayu merayu terhadap bahagian penghakiman Pesuruhjaya Kehakiman ('PK') Mahkamah Tinggi yang mengisytiharkan (i) perintah HMT tidak wajar, tidak sah dan wajar diketepikan; dan (ii) permohonan-permohonan yang dipohon tidak patut diberi kerana mahkamah tiada bidang kuasa membuat perintah sedemikian dalam permohonan untuk deklarasi. Isu-isu yang timbul dalam rayuan ini adalah (i) sama ada penghakiman atau perintah satu Mahkamah Tinggi boleh diketepikan oleh satu lagi Mahkamah Tinggi dengan bidang kuasa setara, sedangkan penghakiman pertama tidak diperoleh secara ingkar tetapi diperoleh secara teratur; dan (ii) sama ada penghakiman pertama Mahkamah Tinggi boleh diserang secara kolateral berdasarkan apa-apa alasan selain penghakiman pertama yang dibuat melanggar larangan besar statutori atau mencabar statut, seperti yang diputuskan dalam kes Mahkamah Persekutuan *Badiaddin Mohd Mahidin & Anor v. Arab Malaysia Finance Bhd* ('kes *Badiaddin*').

Diputuskan (membenarkan rayuan)
Oleh Alizatul Khair Osman HMR menyampaikan penghakiman mahkamah:

(1) Dalam kes *Badiaddin*, Mahkamah Persekutuan memutuskan satu Mahkamah Tinggi tidak boleh mengetepikan perintah muktamad yang diperoleh secara teratur daripada Mahkamah Tinggi yang berbidang kuasa setara. Satu pengecualian khas adalah jika penghakiman muktamad Mahkamah Tinggi boleh dibuktikan tidak sah dan terbatal atas alasan tidak sah atau tiada bidang kuasa. Selain pelanggaran undang-undang keadilan semula jadi, mahkamah atasan boleh menjalankan bidang kuasa inheren dan budi bicaranya untuk mengetepikan satu perintah *ex debito justitiae* dalam kes-kes melibatkan perintah-perintah

A yang melanggar 'apa-apa undang-undang bertulis' tetapi pelanggaran ini mestilah mencabar satu larangan besar statutori. Budi bicara membangkitkan bidang kuasa inheren mestilah dijalankan, secara kehakiman, dalam kes-kes terkecuali iaitu kecacatan mempunyai sifat yang mengkehendaki pengetepian perintah cacat ini untuk membolehkan
B mahkamah menegakkan keadilan.

(2) Fakta kes dalam rayuan ini tidak mempamerkan ciri-ciri yang terlihat dalam kes *Badiaddin*. Ini bukan kes yang satu perintah dibuat mencabar larangan besar statutori atau bercanggah dengan statut. Jika HMT terkhilaf dalam tafsiran beliau terhadap peruntukan-peruntukan dalam
C APJ, penyelesaian sepatutnya buat responden adalah merayu terhadap keputusan HMT dan bukan memfailkan prosiding kolateral untuk mengetepikannya, seperti yang dilakukan dalam kes ini. Pesuruhjaya Kehakiman melangkaui bidang kuasa beliau sendiri dalam memutuskan HMT tidak berbidang kuasa membenarkan perintah atau penghakiman
D yang dibuat. Keputusan PK diketepikan dan penghakiman HMT dikembalikan.

Case(s) referred to:
Badiaddin Mohd Mahidin & Anor v. Arab Malaysia Finance Bhd [1998] 2 CLJ 75 FC ***(dist)***
E *Serac Asia Sdn Bhd v. Sepakat Insurance Brokers Sdn Bhd [2013] 6 CLJ 673 FC* ***(refd)***

Legislation referred to:
Road Transport Act 1987, ss. 91, 96

For the appellant - Americk Sidhu; M/s Americk Sidhu
For the respondent - RK Nathan; M/s Vinod Kamalanathan & Assocs
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[Editor's note: For the High Court judgment, please see Pacific & Orient Insurance Co Bhd v. Mazlan Ahmad & Ors [2016] 2 CLJ 444 (overruled).]

Reported by Najib Tamby

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JUDGMENT

Alizatul Khair Osman JCA:

[1] The appellants herein are appealing against part of the judgment of the High Court made on 10 July 2015 in OS 13704 (the second OS), wherein the
H court made, *inter alia*, the following order:

> 3. Satu deklarasi bahawa perintah Mahkamah Tinggi bertarikh 29.11.2013 yang berpremiskan pada Mahkamah Tinggi Kuala Lumpur Saman Pemula No. 24NCC-324-09-2013 adalah satu perintah yang tidak wajar dan tidak sah dan oleh itu patut diketepikan.

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> 6. Deklarasi bahawa permohonan-permohonan berikut yang dipohon dalam perintah Mahkamah bertarikh 29.11.2013 yang berpremiskan pada Mahkamah Tinggi Kuala Lumpur Saman Pemula No. 24NCC-324-09-

2013 tidak patut diberikan memandangkan Mahkamah tidak mempunyai bidangkuasa untuk membuat perintah sebegitu dalam permohonan untuk deklarasi.

[2] It revolves around the following issue:

Whether a Judgment or Order made by one High Court can be set aside by another High Court of co-ordinate jurisdiction, where the first Judgment is not one obtained in default but obtained regularly ...

It also involves the question as to whether the aforesaid first Judgment of the High Court can be attacked collaterally based on any other grounds other than that in which the first Judgment is made in breach of a substantial statutory prohibition or in defiance of a statute, as decided in the Federal Court case of *Badiaddin Mohd Mahidin & Anor v. Arab Malaysia Finance Bhd* [1998] 2 CLJ 75 (*Badiaddin*).

[3] In *Badiaddin Mohd Mahidin & Anor v. Arab Malaysia Finance Bhd* [1998] 2 CLJ 75 the Federal Court held that it is settled law that one High Court cannot set aside a final order regularly obtained from another High Court of concurrent jurisdiction.

[4] One special exception is where the final judgment of the High Court could be proved to be null and void on the ground of illegality or lack of jurisdiction. In this regard apart from breach of rules of natural justice a superior court can exercise its inherent and discretionary jurisdiction to set aside an order *ex debito justitiae* in cases involving orders which contravened "any written law" but the contravention should be one which defies a substantive statutory prohibition.

[5] In addition, the discretion to invoke the inherent jurisdiction should be exercised judicially in exceptional cases where the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice.

[6] The aforesaid legal position is reaffirmed by the Federal Court in the recent case of *Serac Asia Sdn Bhd v. Sepakat Insurance Brokers Sdn Bhd* [2013] 6 CLJ 673.

[7] In the present appeal after hearing learned counsel and having perused the appeal records, we are of the unanimous view that the appeal should be allowed.

[8] We find on the facts of this case that the present appeal has none of the features that were present in *Badiaddin*'s case. In other words, this is not a case where an order has been made in defiance of a substantive statutory prohibition or in contravention of a statute. Rather the decision of the learned judge in NCC 4 revolves around the interpretation of the provisions of s. 96 and s. 91 of the Road Transport Act 1987.

[9] If the learned judge was wrong in her interpretation of those provisions of the RTA, the proper recourse for the respondent would have been to appeal against the decision of the learned judge but not to file collateral proceedings to set it aside as was done in this case.

[10] In the circumstances, we agree with learned counsel for the appellant that the learned Judicial Commissioner had exceeded his own jurisdiction in holding that the learned judge in NCC 4 had no jurisdiction to grant the order or judgment made therein.

[11] We therefore allow the appeal with costs and set aside the learned Judicial Commissioner's decision and restore the judgment of the learned judge in NCC 4.